

# **Exhibit A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	x	Civil No.: 14-CV-6017 (CS)
KENNETH M. HERVOCHON,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	
	:	
IONA COLLEGE,	:	
	:	
Defendant/Third-Party Plaintiff,	:	<b>JOINT PRETRIAL ORDER</b>
	:	
-against-	:	
	:	
HENNESSEY CONSTRUCTION CO., INC.,	:	
	:	
Third-Party Defendant/ Fourth-Party Plaintiff,	:	
	:	
-against-	:	
	:	
GOTHAM INSURANCE COMPANY,	:	
	:	
Fourth-Party Defendant.	:	
-----	x	
IONA COLLEGE,	:	
	:	
Defendant/Third-Party Plaintiff/ Second Third-Party Plaintiff,	:	
	:	
-against-	:	
	:	
GOTHAM INSURANCE COMPANY,	:	
	:	
Second Third-Party Defendant.	:	
-----	x	

The parties, having conferred, respectfully submit this Joint Pre-Trial Order consistent with Judge Seibel's individual practices, and the Order of Judge Seibel dated June 5, 2017:

1. **Full Caption of the Action**

The full caption of this action is set forth above.

**2. Identification of Trial Counsel**

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**3. Subject Matter Jurisdiction**

This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a)(1) and 28 U.S.C. § 1441(a) and (b) as the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and there is complete diversity of citizenship between parties. Plaintiff Kenneth Hervochon is a resident of the State of New Jersey, and Iona College is a private educational institution chartered by the Regents of the University of the State of New York.

**4. Brief summary of claims and defenses**

A. Plaintiff:

On or about July 27, 2013, Kenneth Hervochon was employed as a carpenter by Hennessey Construction Co. Inc. and had worked in the construction business for a number of years. Iona College owned the premises located at 715 North Avenue, New Rochelle, New York 10801. Iona College hired Hennessey Construction as a general contractor to oversee and complete the renovation of its administrative building at that location. Iona College was responsible for ensuring that all work performed by Hennessey Construction and its employees was performed in a safe manner, in safe conditions and in compliance with OSHA regulations, New York Labor Laws and the Industrial Code, which included laws that pertain to certain scaffolding equipment that was being used to perform elevated work. On July 27, 2013, there was no safe, proper or adequate fall protection equipment available or usable for certain work being performed at the work site at the Iona College administrative building. Kenneth Hervochon was lawfully at the premises on that date performing construction and renovation work for his employer from a scaffold for the benefit of Iona College. That scaffold was not a safe, appropriate or proper scaffold. Iona College failed to provide Plaintiff with such a safe and proper scaffold or alternative, safe and proper fall protection. On July 27, 2013, Kenneth Hervochon was working on the inadequate and not properly secured scaffolding platform when it collapsed causing him to fall from the top of the scaffold platform to the floor. As a result of this fall, Plaintiff was seriously and permanently injured, suffering, amongst other injuries, back, neck, leg, ankle and foot injuries, specifically a calcaneus fracture, requiring hospitalization, surgeries, physical therapy, pain medication and additional on-going treatment. Plaintiff sustained serious and permanent physical, mental and emotional injuries including but not limited to, loss of income and benefits, loss of earning capacity, medical, hospital and rehabilitation expenses, pain and suffering, loss of ability to enjoy life, economic losses, need for future medical care and other related losses and damages. Iona College is strictly liable under Labor Law Section 240 for these injuries and losses. Iona College also violated Section 241(6) of the Labor Law of the State of New York and violated Industrial Code Sections 23-1.5, 23-1.7, 23-5.1, 23-5.3, 23-5.18. Iona College also violated Section 200 of the Labor Law and was negligent in that it violated its non-delegable duty to ensure that the work site was reasonably safe and free of dangers and hazards to those lawfully thereat.

Plaintiff objects to any evidence or arguments at trial that contradict the prior Court's Order on severance.

B. Defendant/Third-Party Plaintiff Iona College:

Iona College contends that it is not liable to plaintiff for this accident under any of the alleged causes of action or theories of liability. Iona College contends it complied with Labor Law 240, Labor Law 241(6) including all applicable relevant Industrial Code provisions and did not violate such statutes. Iona College contends that plaintiff was provided by his employer/third-party defendant Hennessey Construction Co., Inc. with proper protection and equipment to do his elevated work through a properly assembled, constructed and functioning baker's scaffold. Iona College denies and disputes that the scaffold collapsed. Rather, Iona College contends that plaintiff fell off the scaffold because of his own misuse of the scaffold and

**5. Jury Demand**

Plaintiff has demanded a jury trial. The parties anticipate it will take approximately five days to try this case to verdict.

**6. Magistrate Judge**

The parties do not consent to try this case before the Magistrate Judge.

**7. Stipulations or agreed statements of fact or law**

The parties have not reached any stipulations or agreements of law.

The parties have stipulated to the following facts:

- 1) Iona College is a private educational facility chartered by the Regents of the University of the State of New York.
- 2) Iona College owned the administrative building McSpedon Hall.
- 3) Richard Murray was the associate director of facilities at Iona College.
- 4) Thomas Hennessey was the president of Hennessey Construction.
- 5) Hennessey Construction was a general contractor.
- 6) Hennessey Construction was acting as a general contractor on the day of the accident.
- 7) Hervochon was an employee of Hennessey Construction on Saturday, July 27, 2013.
- 8) Hennessey signed a contract for the work on McSpedon Hall the week of July 20, 2013.
- 9) Hennessey signed the contract before Hennessey Construction started the work.
- 10) The college understood that when Hennessey Construction began work on McSpedon Hall in July 2013 it was under the contract it had previously signed.
- 11) The work on McSpedon Hall involved an interior renovation.
- 12) McSpedon Hall was an administration building.
- 13) The renovation involved upgrading the administration lounge, ceilings, walls, doors, and floors.
- 14) On Saturday, July 27, 2013, Hervochon was working for Hennessey Construction at Iona College's administration building, McSpedon Hall.
- 15) Hervochon was instructed by Hennessey Construction to put hat channels on the ceiling in the executive hallway to accept sheetrock that was going to be installed by others that same day.
- 16) Hennessey had set up the scaffold involved in plaintiff's accident on July 26, 2013.
- 17) The scaffold's platform was approximately five and a half feet off the ground.
- 18) The accident happened at approximately 7:15 am on July 27, 2013.

**8. Witness List and Summary of Testimony**

**A. Plaintiff's Witness List and Summary of Testimony**  
**Fact Witnesses:**

1) Kenneth Hervochon – He will testify about his experience as a carpenter and his work for Hennessey Construction, specifically his work at Iona College. He will testify about the work he was engaged in on the day of the accident and how the scaffold suddenly collapsed causing him to fall to the floor and sustain serious injuries. He will testify about his pain and suffering and the medical treatment, including several surgeries and hospitalizations that he underwent related to this accident. He will testify how this accident and resulting injuries have impacted him financially and have prevented him from returning to his long time career. He will testify about the lifestyle impact and changes this accident and resulting injuries have necessitated.

2) James Hervochon - He will testify about his work and his father's work for Hennessey Construction, specifically the work at Iona College. He will testify about the work he and his father were engaged in on the day of the accident and how the scaffold suddenly collapsed causing his father to fall to the floor and sustain serious injuries. He will testify about his father's pain and suffering and the medical treatment, including several surgeries and hospitalizations that his father underwent related to this accident. He will testify how this accident and resulting injuries have impacted his father financially and have prevented him from returning to his long time career. He will testify about the lifestyle impact and changes this accident and resulting injuries have necessitated for his father.

3) Thomas Hennessey – He will testify about Hennessey Construction's work relationship with Iona College and how they were hired to renovate the administrative building. He will testify about the safety equipment, including scaffolds, used on site to perform that renovation work. He will testify about plaintiff's employment with Hennessey Construction. He will testify about the work being performed on the date of the accident. He will testify about his observations of plaintiff and the scaffold shortly after plaintiff's accident.

4) Plaintiff reserves the right to call any and all witnesses necessary to authenticate business records, including medical records, to the extent that is a contested issue at trial.

**Expert Witnesses:**

1) John Tomich – He will testify about OSHA and the New York Labor Law and Industrial Code as it applies to the facts of this case. He will testify regarding the responsibilities of the owner and contractor. He will testify that the baker's scaffold was

the inappropriate safety device for the work being performed in that it failed. He will testify that the baker's scaffold that plaintiff was using to perform his work collapsed causing plaintiff to fall. He will further testify that the collapse of the platform was caused solely by other parties. He will be called upon to rebut any testimony to the contrary.

*Defendant Iona Objects to the identified scope of this expert's testimony as exceeding his Rule 26 disclosure, report and deposition testimony. Defendant Iona College also objects to the admission of this expert's conclusions and opinions of this expert as to how or why the accident occurred as lacking foundation.*

2) Dr. Becker – He will testify about his expertise and experience as an orthopedic surgeon and his treatment of plaintiff in this case. He will testify about plaintiff's injuries, the cause thereof, the treatment therefore, the surgeries plaintiff underwent, the pain and suffering involved in plaintiff's recovery and the permanency of his injuries. He will also testify about plaintiff's current physical status and future medical care for the injuries.

3) Dr. Cushner – He will testify about his expertise and experience as an orthopedic surgeon and his treatment of plaintiff in this case. He will testify about plaintiff's injuries, the cause thereof, the treatment therefore, the surgeries plaintiff underwent, the pain and suffering involved in plaintiff's recovery and the permanency of his injuries. He will also testify about plaintiff's current physical status and future medical care for the injuries.

4) Dr. Krishnamurthy – He will testify about his expertise and experience as an orthopedic surgeon. He will testify about the findings of his independent medical examinations of plaintiff for Workers' Compensation and the conclusions he made therefrom.

*Defendant Iona Objects to this expert's testimony as cumulative. This is the third orthopedist identified by plaintiff's counsel and the physician is not a treating physician.*

Treating Physicians:

1) Dr. Soto - He will testify about his expertise and experience as a plastic surgeon and his treatment of plaintiff in this case. He will testify about plaintiff's injuries, specifically the infection in his foot, the cause thereof, the treatment therefore, the surgeries plaintiff underwent, the pain and suffering involved in plaintiff's recovery and the permanency of his injuries. Plaintiff further reserves the right to call and question any witnesses identified on the defendant's or third-party defendant's witness lists.

B. Defendant/Third-Party Plaintiff's Witness List and Summary of Testimony